IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1091(S/S)2001

(Old no. 3424 of 1994

Udai Singh S/o Sri Puran Singh,
Resident of village Barab, P.O. Barad,
Tehsil- Okhimath, District Chamoli. ---- Petitioner

Vs.

1. Commanding Officer, VII Garhwal Rifles,
   C/o 56 APO,
2. Brigadier Commander, HQ 165,
   Mtn. Bde, C/o 99 APO,
3. Garhwal Rifles, Records Office,
   Records Garhwal Rifles, Lansdowne,
   U.P. ---- Respondents.

Sri Rajendra Dobhal, learned counsel for the petitioner.
Smt. Anjali Bhargava, learned Standing Counsel for Union of India/respondent.

Hon'ble M.M. Ghildiyal, J,

Heard Sri Rajendra Dobhal,l earned counsel for the petitioner Smt. Anjali Bhargava, learned Standing Counsel for Union of India/ respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

i. Issue a writ of certiorari quashing of the impugned order dated 18.11.1991 (annexure no. 5 to the writ petition), passed by respondent no. 1,

ii. Issue a writ of mandamus directing to the respondent to reinstate the petitioner in his army service as No. 4066317 N Rifleman in VII Garhwal Rifles of Indian Army,

iii. Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the present circumstances of the case,

iv. Award the cost of the petition to the petitioner.

Stand of the petitioner is that he was enrolled in Indian Army on 7th November 1983 as solider. On 28th October 1988 an incident took place in the residential quarter of the petitioner where the wife of petitioner had burnt herself. It was alleged that the wife of the petitioner has taken the action to burn herself because of harassment the by petitioner. Consequently, a Court of Inquiry was ordered to be initiated by the Commanding Officer as to under which circumstances Smt. Vimla Devi died. A criminal case was lodged against the petitioner u/s 306 IPC and the petitioner was tired in the Court of Sessions Judge, Pithoragarh in Sessions Trial no. 2 of 1991. In the Sessions Trial the petitioner was convicted u/s 306 IPC by the Sessions Judge, Pithoragarh vide its judgment dated 7th April 1992 by which the petitioner was convicted and sentenced to undergo for a period of 3 year's rigorous imprisonment. Consequently, the matter was taken up for discharge of the petitioner and after following due procedure, the petitioner was discharged from service w.e.f. 19th November 1993 vide order dated 18.11.1993 passed by respondent no. 1.

Learned counsel for the petitioner has submitted that the petitioner, against the judgment dated 7th April 1992 passed by the Sessions Judge, Pithoragarh, has preferred appeal before the High Court, which is still pending.

In these circumstances, it would be justified that after the appeal is concluded, the petitioner may approach to the

respondents for appropriate action to be taken in the matter, in view of the judgment which would be passed by the High Court in the appeal preferred by the petitioner, in case, the petitioner is not found guilty and is acquitted by the High Court.

In the prevailing circumstances, since the appeal against conviction of the petitioner is pending before the High Court, no order can be passed by this Court, until final order is passed in the appeal. Consequently, the writ petition is disposed of with the observation that the petitioner may apply and approach before the Appropriate Authority for redressal of his grievances, after the appeal against his conviction is decided by the High Court.

(M.M.Ghildiyal, J)

April 25, 2007:
NCM: